

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION  
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In the Matter of )  
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Amendment of Part 95 of the )  
Commission's Rules to Provide )  
Regulatory Flexibility in the )  
218-219 MHz Service )

WT Docket No. 98-169  
RM-8951

To: The Commission

**PETITION FOR RECONSIDERATION  
AND CLARIFICATION**

Vista Communications, Inc. ("Vista"), pursuant to Section 1.106 of the Commission's rules, hereby seeks reconsideration and clarification of the September 10, 1999 Report and Order in this proceeding (the "Order").<sup>1</sup>

I. Preliminary Statement

Under the rules adopted in the Order, certain licensees in the 218-219 MHz Service will be permitted to continue to participate in the installment payment program that was a feature of the Service at the time the licenses were initially auctioned. These "Eligible Licensees" may select from among various payment options, including reamortization and repayment, amnesty, and prepayment, in order to retain their licenses. 47 C.F.R. § 95.816(b). Eligible Licensees may elect one of these options even if they never made any installment payment whatsoever, provided

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<sup>1</sup> FCC 99-239 (released Sept. 10, 1999), 64 Fed. Reg. 59656 (Nov. 3, 1999).

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they made a grace period request within 90 days after failing to make a required installment payment. Id.

The new rules define “Eligible Licensees” as those who were current in installment payments (i.e., less than 90 days delinquent) as of March 16, 1998, or who “properly filed” grace period requests under the former installment payment rules. 47 C.F.R. § 95.816(b). Licensees that met neither of these criteria, regardless of the circumstances, are considered “Ineligible Licensees” and will lose their licenses. This is so even if they had timely paid many of the installments, but happened to be delinquent on March 16, 1998, and/or filed a grace period request, but had not “properly filed” such a request.

Vista believes that the Commission has defined too narrowly the category of licensees that may qualify as Eligible Licensees under the new rules. In so doing, the Commission harms worthy licensees, such as Vista, by denying them the opportunity to develop their licenses. Vista requests that the Commission extend the opportunity to retain and pay for their licenses to a limited class of additional licensees -- those who had made substantial payments on their licenses or who had filed a grace period request as of the date the Order was adopted (September 7, 1999). Such action would be consistent with the Commission’s goals in this proceeding and is appropriate in light of the history of the 218-219 MHz service.

## **II. The Commission Should Modify the Definition of Eligible Licensees**

The rules adopted in the Order provide great flexibility to Eligible Licensees to retain their licenses. But they offer no such relief to licensees who do not meet the narrow definition of an Eligible Licensee adopted in the Order. The new rules arbitrarily exclude licensees, like

Vista, that made substantial payments on their licenses, both down payments and installment payments, but happened not to be current on, or to have properly filed a grace period request by, March 16, 1998.

There is no discernible reason why March 16, 1998 should be the cutoff date for eligibility for those who made substantial payments on their licenses. Indeed, the obligation to make installment payments was not suspended by the Commission until September 1998, nearly six months after March 16, 1998.<sup>2</sup> Thus, licensees who made no payments between March and September 1998 and fell into default would still be Eligible Licensees.

The new rules also arbitrarily exclude licensees who filed grace period requests more than 90 days after first becoming delinquent. The rules specify that licensees with “properly filed” grace period requests are Eligible. As a result, those licensees who never made any installment payments to the Treasury for their licenses are entitled to retain their licenses simply because they filed a grace period request. This is completely at odds with the intent of the grace period rules, which originally contemplated giving licensees a maximum grace period of only 180 days before they would have to resume payments or lose their licenses.<sup>3</sup> The Order provides such licensees, who made no payments but had “properly filed” grace period requests pending for years, the greatest flexibility to retain their licenses. Yet, other licensees who had a history of substantial payment are considered ineligible under the rules because their grace period requests were filed more than 90 days after missing an installment payment. This result is manifestly

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<sup>2</sup> Amendment of the Commission’s Rules to Provide Regulatory Flexibility in the 218-219 MHz Service, Docket No. 98-169, Order, Memorandum Opinion and Order, and Notice of Proposed Rulemaking, 13 FCC Rcd 19064 (1998), Erratum (released Sept. 18, 1998) (the “218-219 MHz Order and NPRM”).

unfair. If the Commission is going to allow licensees to become eligible by virtue of having filed a grace period request, it should extend that eligibility to all licensees who made the effort to file a grace period request prior to the adoption of the Order.

Rather than adopt arbitrary dates for determining delinquent payment status or the filing of grace period requests, Vista urges the Commission to adopt a more flexible, but inherently more equitable, standard to determine whether a licensee is Eligible. This will allow licensees who wish to retain and develop their licensees to do so, thereby bringing new services to the public.

Vista accordingly urges the Commission to modify the definition of Eligible Licensee to read as follows: “Eligible Licensees are those that made substantial payments on their licenses (i.e., timely made all down payments and at least four quarterly installment payments), or filed a grace period request prior to September 7, 1999.”

Expanding the class of eligible entities in this manner is equitable and reasonable in light of the unique circumstances surrounding the licensing of the 218-219 MHz Service. When it suspended payment obligations and proposed new payment rules, the Commission stated its “belie[f] that widespread cancellation of IVDS licenses through operation of the late payment fee and automatic cancellation provisions of the revised grace period rule would be inconsistent with” those proposed rules.<sup>4</sup> Now, the Commission specifically acknowledges the “myriad

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<sup>3</sup> 47 C.F.R. § 1.2110(e)(4) (1994).

<sup>4</sup> 218-219 MHz Order and NPRM, para. 13.

intervening factors”<sup>5</sup> that created substantial confusion and uncertainty about licensees’ payment obligations. These factors included changes in the timing of installment payments;<sup>6</sup> conflicting notices about such changes;<sup>7</sup> changes in the grace period and other license payment rules;<sup>8</sup> statements in correspondence received by licensees that “accounts will be reviewed on or about September 20, 1999 ... [a]ny necessary adjustments will be made at that time” ... “[a]ll licensees will be expected to make their accounts whole at that time”;<sup>9</sup> uncertainty about the requirement to file a grace period request; the wholesale suspension of installment payments;<sup>10</sup> and subsequent proposed changes to the installment payment rules.<sup>11</sup> In light of these factors, cancellation of licenses for failure to meet a narrow definition of Eligible Licensee is contrary to the goals of this proceeding.

In the Order, the Commission declined to make all licensees eligible to retain their licenses, stating that doing so “would be unfair to licensees that have complied with the

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<sup>5</sup> Order, para. 38. See also 218-219 MHz Order and NPRM, paras. 9-11.

<sup>6</sup> See, e.g., “Notice to January 18, 1995 IVDS Grantees,” from the Office of Managing Director; Public Notice, Quarterly Installment Payments for IVDS Auction Licensees to Begin June 30, 1995, Mimeo No. 53031 (released March 3, 1995).

<sup>7</sup> See Order, 11 FCC Rcd 3031 (WTB 1995) (staying deadline for initial payment deadline); erratum (released Sept. 25, 1995) (clarifying that the deadline for initial and subsequent quarterly payments had been stayed).

<sup>8</sup> Amendment of Part 1 of the Commission’s Rules – Competitive Bidding Procedures, WT Docket No. 97-82, Third Report and Order and Second Further Notice of Proposed Rulemaking, 13 FCC Rcd 374 (1997), errata, 13 FCC Rcd 4621 (WTB 1998), 13 FCC Rcd 10274 (WTB 1998).

<sup>9</sup> See “Notice to IVDS Licensees” from Regina W. Dorsey, Chief, Billings and Collections Branch (citing “unusual developments which disrupted/delayed some licensees in making their initial installment payments.”).

<sup>10</sup> See 218-219 MHz Order and NPRM, at para. 14 (as corrected by erratum, released Sept. 18, 1998).

<sup>11</sup> Id.

Commission's rules and made payments and/or properly filed grace period requests." Order, para. 37. Vista agrees that it would be unfair to include all licensees, regardless of their payment histories, in the category of Eligible Licensees. However, the Commission's definition unfairly harms worthy licensees who made many payments in good faith under the original schedule, but became confused about their obligations once the Commission's moratoriums and reamortizations of payment schedules began, or whose grace period requests were filed but not "properly filed" within 90 days after missing a payment (notwithstanding the fact that payment schedules were one of many sources of confusion). These licensees made substantial payments in good faith to the Treasury for their licenses. They should be given an opportunity to retain and develop them by being included in the definition of Eligible Licensees. Doing so would facilitate bringing service to the public and would not jeopardize the integrity of the Commission's processes.

Alternatively, Vista requests that the Commission revise the definition of "Eligible Licensee" to include any entity that, by the Election Date (as defined in the Order) has become current in installment payments as of March 16, 1998. Such a modification to the rule would, like Vista's above-proposed modification to the new rule, permit those licensees who wish to retain a license to do so.

Vista's proposed alternative also would not be unfair to other licensees. Pursuant to the freeze on installment payments adopted in 1998, an entity that is deemed an Eligible Licensee under the rule adopted in the Order has had no installment payment obligations since December 1997 (although it may have made its March 1998 installment payment). Allowing other entities to make retroactive payments would place all Eligible Licensees in the same position with

respect to their payment status.

### III. The Commission Should Clarify the Status of Department of Justice Approval

In the Order, the Commission stated that it would “recommend a refund of the installment payments” made by Ineligible Licensees, subject to the approval of the Department of Justice, which has exclusive authority to compromise claims in excess of \$100,000.<sup>12</sup> The amnesty option for Eligible Licensees, which also involves debt forgiveness, likewise is subject to Department of Justice approval.<sup>13</sup>

Vista requests that the Commission clarify the status of Department of Justice approval prior to the February 29, 2000 election date, so that licensees will have sufficient time to determine whether amnesty, or any other form of debt forgiveness, is a viable option. Vista recommends that the Commission release a Public Notice notifying interested parties of the status of DoJ approval at least 30 days prior to the election date.

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<sup>12</sup> Order, para. 39 & n.135.

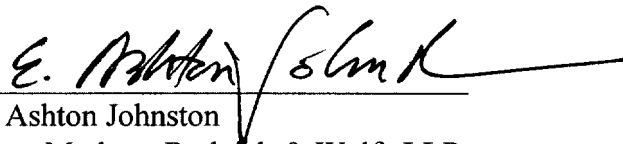
<sup>13</sup> Id., para. 30.

Accordingly, Vista requests that the Commission modify Section 95.816 of the rules, and clarify certain aspects of the Order, as requested above.

Respectfully submitted,

**VISTA COMMUNICATIONS, INC.**

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